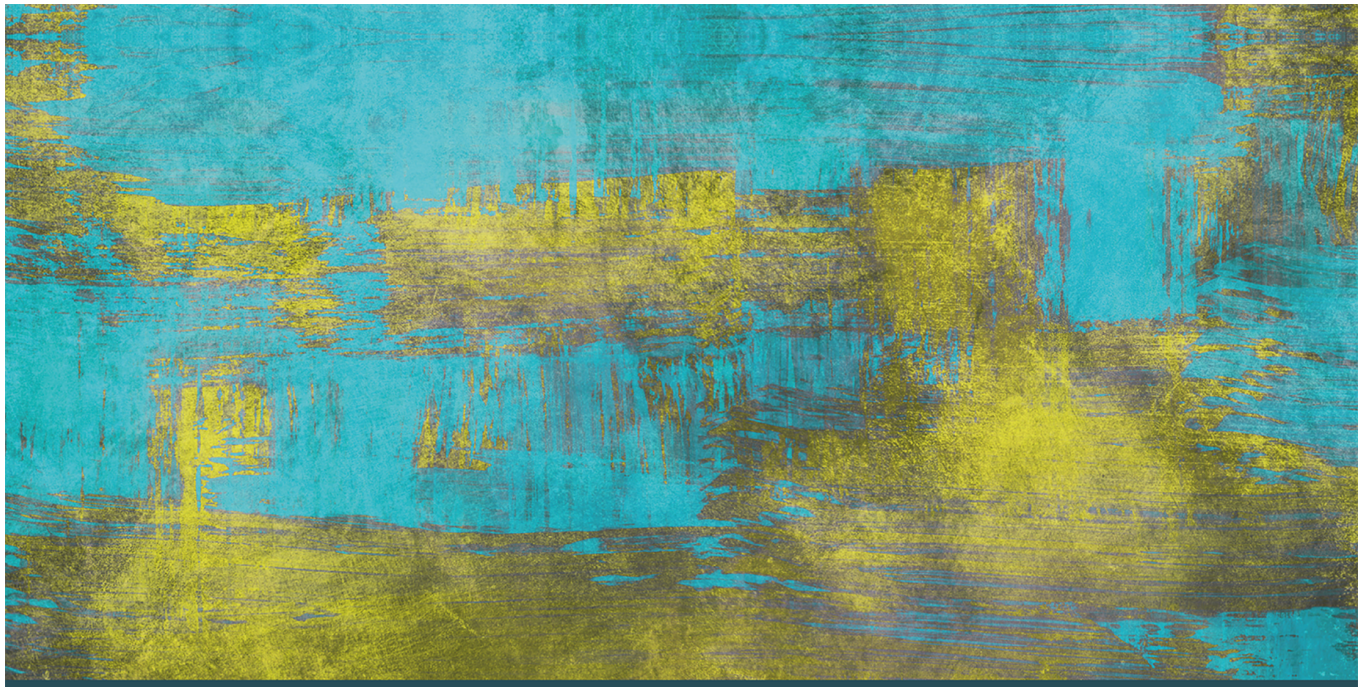

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INDIVIDUAL WILL AND THE CIVIL LAW TRADITION

RETHINKING LEX PRIVATA

Edited by
Tommaso dalla Massara

This volume sets out to explore the relationship between individual will (*voluntas*) and the legal rule. What unfolds in the following pages is a wide-ranging itinerary, moving between past and present, most notably ancient Rome and the contemporary world.

The guiding question is as radical as it is enduring: in what way can *voluntas* (a psychological impulse internal to the individual) come to determine the legal rule? European private law tradition rests on the premise that legally binding acts – contract and will, to mention only two paradigmatic cases – derive their force from individual will. From the Roman sources arises, with exemplary force, the notion of *lex privata*: the idea that private will itself may generate binding legal norms.

Such a premise immediately leads to further questions. Above all, it compels reflection on the authenticity of that will: what if *voluntas* is compromised? The law of defects (*error*, *dolus*, *metus*) opens the problem of whether distorted or corrupted will can truly sustain the validity and effects of a legal rule.

The reflections gathered in this book approach the European civil law tradition as a broad and unified phenomenon, one in which law is inseparably bound to the historical and cultural contexts in which it takes shape.

Tommaso dalla Massara is Full Professor of Law at Roma Tre University. His research has long focused on the foundations and models of the European civil law tradition; he is author of numerous monographs and essays in Roman law and private law. He also serves as editor of academic book series with leading publishers and sits on the editorial boards of several distinguished international journals.

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Chapter 4

THE LEGAL FORCE OF THE INDIVIDUAL WILL: REFLECTIONS AT THE INTERSECTION OF POLITICAL PHILOSOPHY AND LEGAL THEORY

Mauro Grondona

ABSTRACT: *This essay explores the evolving role of individual will as a driver of legal change, situated at the intersection of political philosophy and legal theory. It examines the dialectical relationship between individual claims and the legal system, highlighting how the contemporary legal order is increasingly shaped by individual freedom expressed within a pluralistic, open society. The paper argues that individual will, through its normative and transformative force, acts as both an engine of legal change and a balancing mechanism, fostering a dynamic equilibrium between continuity and innovation in the legal system. It discusses how this transformation occurs within a cooperative framework that integrates judicial mediation and social legitimacy, emphasizing concepts such as constructive* versus *constructivist judiciary, remedial expansion, and the progressive adaptation of law to social needs. Ultimately, the essay underscores that legal morphology is inseparable from social morphology, advocating for a conception of law as a relational and evolving structure grounded in the interplay between individual aspirations and collective values.*

KEYWORDS: *Will – Freedom – Intention – Liberalism – Judiciary – Social norms – Legal transformation – Continuity and change – Normativity – Social legitimacy.*

1. The legal will, yesterday and today

When considering the legal force and effectiveness of individual will (*voluntas*) [1]

[1] See Galeotti, in this volume, particularly § 2.

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– specifically, the legal effects it produces[2] – several key questions arise, in particular:

(i) the relationship between individual will and general will; *i.e.*, the will intended as *ratio iuris*, as a pillar of the general purpose of the legal system (Murphy 2018);
(ii) the selective function of the legal system;
(iii) the role of the legal system as an axiological filter, understood as an institutional *locus* for the synthesis of social needs: hence, moreover, the democratic reach of the legal system, as opposed to its function as an axiological stabilizer; hence (in this perspective, quite consistently), an eminently enforceable function of the jurisdictional *apparatus* (at whatever level of the system).

The indicated issues have traditionally been resolved along the following unitary trajectory: the legal system is necessarily in a position above individual freedom (Dihle 1982). Therefore, for individual intention to be legally effective, it must be received by the legal system. In other words, the individual's expression of intent encounters a normative filter. Everything that passes through this filter becomes the legal will (*voluntas*) of the institutional system. The system's filtering function is politically legitimate because the institutional methods to exercise this function are based on the usual democratic procedures. Consequently, the political (and thus axiological) content of the legal system is legitimate to the extent that it conforms to the democratic procedures established to determine the institutional axiology, which therefore must be respected and indeed implemented at every stage of legal application. That is why, from this perspective, the judicial function serves to confirm the legal system's axiology. In this view, any deviation between the content of the legal order and that of judicial decisions constitutes a wound inflicted on the legal system as a democratic institution.

However, if we look today at the conceptual and operational dimensions of individual legal will, and at the relationship between the individual dimension (or, according to a legal-political phraseology that seems particularly compelling, individual claims) and the collective dimension (by which I obviously mean the legal order, especially in its axiological content, which is prescriptively relevant because it is democratically decided), we find that things are no longer exactly in these terms (Fischer et al. 2024).

Or rather. On the one hand, no doubt the idea of a legal system operating dialectically in relation to individual wills remains firm in place (otherwise, we would fall straight into the logical fallacy of confusing *ought to be* with

[2] See Beghini, in this volume, particularly § 1.

being – indeed worse: into the logical fallacy of considering *to be* on a par with *ought to be*). But on the other hand (and here a problem emerges, because the two aspects go together, and therefore it is necessary to find, if not a convergence, at least a way out of the difficulty that, on closer inspection, reveals a potential contradiction), it is true that the spaces of individual juridical agency are tending to open.

In other words: it is true that the social spaces in which the individual dimension evolves are expanding. Moreover, the plurality of this individual dimension should be emphasized, in the sense that it is not merely a matter of individualities – of isolated subjectivities –, but of individualities and subjectivities that converge and act collectively within the social dimension, and therefore also within the political and legal dimension (Queiroz 2018).

Put differently: individual will, the moment it becomes a socially audible voice, connotes itself as a social force, as a socially transformative force, and a power. At this point, it becomes, therefore, a force connoted by the political element of legal order: a legal power. Here, then, the individual will, taking on a juridically relevant scope, becomes one of the sources of law. And I would add that, at least under certain conditions (conditions that concern the democratic hold of the system of order, and thus of the legal system understood as the institutional *locus* of liberal democracy), it can indeed be considered the main source of law. This is because, as previously noted, the social spaces in which individual freedom (in all its forms) manifests itself progressively tend to expand in proportion to the consolidation of the rate of the liberal democracy in the legal system; or rather: they increase in proportion to the rate of social openness of liberal democracy.

From this point of view, contemporary pluralistic society is an open society (in the evidently Popperian sense), and as such capable of enhancing the dialectic, that is intrinsic to the pluralistic dimension, between individual and social aspects (Gordon 2006).

If we dwell a moment longer on the reasons that have led to the expansion of the social spaces of freedom today, some central and decisive aspects emerge, both for the purposes of our discourse and for a realistic approach regarding the legal force of individual freedom.

First, the steady expansion of human rights.

An expansion, indeed, that is not only quantitative, but also qualitative. Which carries a very precise meaning. The quantitative expansion has led to an increase in the number and name of human rights, thereby ensuring that the entire projection (both static and dynamic) of the human being has been, and is, more effectively protected.

But alongside the quantitative growth, there is also precisely the qualitative expansion, which has led to an effect clearly consistent with the former,

but not identical to it. That is to say: qualitative expansion refers to the intensity and the ways through which everything relatable the existential dimension of the human being takes on legal relevance, namely as a matter of legal protection.

In particular, there is one aspect that must be highlighted: the qualitative expansion of human rights introduces a dynamic profile. And that dynamic profile pertains to the individual and subjective perception of the space of institutional legal protection needed, for the purpose, precisely, of a protection that could be effective with respect to those who formulate such a need for protection. Thus, we are faced with a dynamism that, unlike what happens on the strictly quantitative level, does not merely lead to a nominalistic increase in personal rights, but rather fosters a substantive expansion. From such substantial extension, the step is short to be faced with an existential dimension of law, which – as the object of perception by the subject who is its owner – becomes a social vehicle of remedial expansion innovation. Hence, in a chain, the strengthening of the centrality of individual subjective situations affects the objective, systematic, and institutional dimension.

The discourse then leads directly to the theme already mentioned just above, namely, remedial expansion. In summary, remedial expansion has two meanings and affects two parallel but different domains.

First, remedial expansion means that the protection of legally relevant situations (*i.e.*, how such situations are safeguarded) is expanded and refined by expanding it.

Second, remedial expansion also implies that the remedial refinement is (or can become) a productive source of law. Given, in fact, a remedial *apparatus* that is flexible and thus quite easily adaptable to claims, the favourable outcome of such a request for protection is conceivable precisely because of the aforementioned remedial flexibility. Here, then, is that such remedial expansion, understood as a transformation of the protection technique itself, moves in parallel with the dual idea of legal effectiveness and legal argumentation. Both aspects – the effectiveness and that of argumentation of law – move in the same remedial direction (and in particular, a direction of remedial enhancement).

In other words, the contemporary right (understood both in the subjective sense and in the objective sense, as an instrument of protection) is meaningful if, and only if, it is effective: that is, if it is a rule that is not only enforced, but one that actually serves to protect a legally relevant interest. Here, the interplay between remedies, effectiveness, and argumentative dimensions emerges with particular evidence. The identification of the legal relevance of the interest protected or to be protected, today, is often the consequence of an argumentative construction of legal relevance itself – consistent

with the postulate of legal effectiveness –, coinciding with the argumentative construction of legal significance.

In this sense, then, the question of legal relevance should be considered as the outcome of a judgment, of a constructive character, formed in response to the concreteness of the specific claim (*ex post facto* judgment), and not as the outcome of a judgment, of a descriptive character, which translates into a rule of judgment (*regula iuris*) a legislative provision pre-existing the judgment itself. In this latter case, the rule of judgment itself is pre-existing, because it is contained in the legislative provision, and as such inferable from the latter by applying the usual criteria of legal hermeneutics.

The two profiles just referred to – law as effectiveness; law as argumentation, with the many consequences that can easily be derived from such parallels, again, in argumentative terms – are closely connected. Law is effective because it is sustained by the force of argumentation, and argumentation operates as an instrument for the progressive construction of a moving, or adaptive, *juridicity* (understood as the true juridical nature of legal phenomena).

In this sense, law assumes immediate social significance as an immediate social product (Sémanne 2025).

It is precisely within this framework of synthesis that it can be said that contemporary legal systems look to the individual will (*voluntas*) as a fundamental factor in the production of *juridicity*: in fact, social action and movement originate in individual action, in those individual claims oriented toward achieving the recognition of that juridical relevance that opens up the remedial dimension. Upon closer inspection, it is nonetheless a matter of an indirect, mediated, or at any rate a cooperative production of *juridicity*, and certainly not a production that takes place by reason of individual will alone. Indeed, it is obvious to observe that, if this were indeed the situation, that is, if we were faced with an individual will in itself legitimized to produce new law, this same will could take on the characteristics of arbitrariness and prevarication, with serious harm first and foremost to institutional stability, which is functional to remedial effectiveness, where institutional instability brings with it remedial instability, hence, also, possible remedial arbitrariness (Lloyd 1902).

A close reading of this picture shows that the individual will (*voluntas*) can become normative precisely because it will always, and necessarily, operate within a relational dimension. And there is no doubt that law – and therefore the legal system – is the place *par excellence* of relationality.

In this way, moreover, the radical opposition between what is individual and what is social – between individualism and collectivism, between individualism and organicism, between individualism and communitarianism (all conceptual pairs that do not coincide with each other, but all connoted by an intrinsic tension, at least *prima facie*) – is diluted, and indeed turns into

cooperation. One could say that everything that becomes social originates as individual, and what is social, such as *ex ante*, affects what *ex post* will become the new individual.

After all, this is the trajectory (today to be recovered, or at least revalued) of communitarian liberalism (Krygier 2013), and individual freedom that becomes a norm – that is, that takes a central role in the production of legal rules – is a communitarian freedom, that is, a relational freedom (Mańko 2025).

2. The ordering function of the individual legal will

Within an ordinal framework that is not only open, but above all progressively constructed through the cooperation between the principle of effectiveness and the principle of argumentation (law is effective insofar as it is argumentation), it is clear that the spaces for the individual legal will to perform a transformative and normative function are bound to grow.

This expansion of individual legal will bring with it four consequences: (i) the renewal of the relationship between the legal system and the judiciary; (ii) the renewal of the framework of the sources of law; (iii) a progressive and constant institutional transformation; (iv) an acceleration of the speed of legal change.

These are four fundamentally essential aspects of contemporary law.

Let us look at them individually, starting with a familiar premise.

Individual legal will today has a primary ordering function. Through individual legal will, and in particular through the constant dialectic (and often clash) between mutually different individual claims, the legal system not only changes, but progressively reaches conditions of new equilibrium, without a break in continuity, without gaps of *juridicity* and thus 'remediality'.

In other words, the juridical force of the individual will is a powerful juridical engine (and one might add, indeed, today it may be considered the most powerful juridical engine): a force that is expressed in two different senses. On the one hand, there is transformative power (law changes, and therefore the legal system changes); on the other hand, there is balancing and rebalancing power. The juridical force of the individual will then simultaneously performs two functions (both essential): it accelerates and restrains the movement of law, straddling continuity and discontinuity (Ibbetson 2010).

Suppose we were to recall two famous theoretical models. In that case, we might think of Kuhn's model of paradigm shift (oriented toward discontinuity) and Popper's model of conjectures and refutations (oriented toward continuity).

If this is the starting point, let us now examine how the juridical force of the individual will is articulated around the four points mentioned above.

3. The new relationship between the legal system and the judiciary

Let us start with the relationship between individual legal will and judicial function, which naturally affects the relationship between ordering and jurisdiction. [3]

From this point of view, there is no doubt that the judicial function undergoes a decisive transformation: the judiciary is no longer a sector of the system called upon to apply pre-constituted rules; on the contrary, the judiciary enters into a dialectical relationship with the individual legal will itself. The classic moment in which this dialectical relationship occurs is obviously the trial. Here, on closer inspection, we have a double dialectic: on the one hand, the dialectic between the parties to the trial; on the other hand, the dialectic between parties and judges (Burgers et al. 2020).

In this perspective, then, it is rather evident that the rule pronounced at the outcome of the trial cannot be understood as a mere declaration by the judge of what the legal system has previously determined and which the judge merely reaffirms in declaratory terms. If this were the scenario, we would face a declarative judiciary, in fact, which, however, does no longer correspond to the current situation. It may incidentally be noted that there is a perfect parallelism between legal effectiveness, legal argumentation, and the procedural dimension of law: contemporary law revolves entirely around a constructive judiciary. With the obvious premise, of course, that we are thinking here of systems that can genuinely call themselves respectful of the *rule of law*, and therefore be liberal-democratic: it is precisely in such systems that individual liberty can fully express itself and still play a transformative role in the proper sense, that is, in the substantive sense (Daou 2025).

I am referring to 'constructive judiciary'. It is perhaps useful to dwell briefly on its adjective to avoid ambiguity. At first glance, it might be noted that the idea of constructive judiciary is at odds with the notion of an individual will endowed with legal force, or at any rate with the idea of an individual force, and thus legitimized, in the liberal-democratic sense, to give rise to new rules (hence the overall and progressive institutional transformation).

A distinction must then be made between constructive and constructivist judiciary (*à la* Hayek, of course).

[3] See Orlandi, in this volume.

Constructive judiciary is marked by a dialectic with the individual legal will, which, as a claim asserted in court, potentially has the features and the content of a legally relevant will, that is, a normative will.

Constructivist judiciary, by contrast, does not play any dialectical role: it presupposes a specific legal order to be implemented. In this perspective, of course, the qualification of the claims asserted in the process moves in this strict logic, depowering the legal force of the individual will. Indeed, we are faced with an individual will that is always recessive, as opposed to the will of the legal order: in this sense, the will of the legal order does not arise as a dialectical synthesis of many individual wills in mutual connection and competition, but rather as a compact normative prescription, predetermined in its content. Hence 'constructivist judiciary': if the normative content of the rule is predetermined, we are faced with an effectively constructivist consequence, because the space for spontaneous transformation (*i.e.*, through the dialectical force of legal argumentation), if any, is minimal. However, on closer inspection, and in prescriptive terms, it must be said that such space cannot exist.

Constructivist judiciary, then, is a declaratory judiciary, operating within a legal order that pre-exists judgment.

Constructive judiciary, on the other hand, is a judiciary that dialectically progressively constructs the legal order (and, in this sense, it is a legal order that is to some extent always new, and yet, in parallel, always in equilibrium, concerning what we may call voluntarist dynamics, *i.e.*, the ensemble of purposes to which individual wills tend).

In this sense, constructive judiciary is a source of law through law, and specifically through the dialectic of judgment.

We can then say that constructive judiciary is a 'judiciary of freedom', perfectly suited to the current context of a liberal-democratic society, and authentically open, that is, plural. A political place where pluralism, as an axiological principle, underlies the political (and thus ordinal) legitimization of an individual will that becomes the norm, that is, capable of producing new rules.

In contrast, the constructivist judiciary is a 'judiciary of authority' in opposition to ordinal pluralism (Esen 2024).

4. Individual legal will and sources of law

The reasons for saying that, today, the individual legal will (*voluntas*) is *per se* a source of law, have already emerged. Indeed, the process of legal transformation depends largely on it. With an additional emphasis: the individual

legal will (or rather: the legal efficacy of the individual will) also assumes the role of a social mediator (Munger 2025).

In this sense. It is clear that not all individual claims that move and express themselves within the social context are destined (if at all, at a given historical-political moment) to flow into the dimension of legal relevance.

Consequently, the legal force attributed to the individual will is the product of a competition between claims and non-overlapping interests (both individual and collective). Therefore, it is the individual will itself that dialectically performs the role of spontaneous selector of *juridicity*. A *juridicity*, precisely, constructed from below rather than imposed from above, in accordance with the contemporary paradigm of a *juridicity* in progressive construction because it represents the reasonable and balanced (also in terms of time, see *infra*, § 6) synthesis of social dynamics.

In this sense, the legal system, and therefore law itself, becomes living, thanks to judicial mediation, which, in turn, relies on the mediation operated through that process (at the same time, competitive and cooperative) of progressive discovery and production of new *juridicity* originating from individual needs that do not remain as such, but become 'socialized,' that is, transformed into social force (Steuer 2025).

Even in this perspective, discovery and production are not antithetical terms.

For an easily identifiable reason: in both cases, we are faced with the production of new law in substantive terms; what changes is the mode of production (Ferrera 2025; Benassi 2025). If we think of discovery, we are obviously thinking of legal rules that are already socially, if not in force, present, and whose transformation into legal rules is desired. In these cases, therefore, there is a substantial overlap between social rules (*i.e.*, the social feeling of *juridicity* of social norms, or social feeling of normative force of social norms) and juridical rules. This is why talking about discovery in the proper sense is correct: both on the technical-legal level (the rule exists insofar as it is applied) and on the axiological level (the content of the rule represents a social value, and social value exists where behaviours and shared standards prevail, *i.e.*, where social approval outweighs disapproval to the extent that the legal system does not feel compelled to expunge the rule or, rather, to ensure that the social rule fully assumes legal *status*).

If, on the other hand, we think, in the proper sense, of the construction of the legal rule, and if, of course, we leave aside the introduction of the new legal rule by the legislature (when that is the hypothesis), we would, indeed, be faced with a legislative construction. A construction, however, based on what observed above, is in danger of entering the semantic area of

constructivism. In fact, the legislative rule is a rule, in this sense, imposed. Specifically, it is a general, abstract norm that provides a typological synthesis of the interests at stake. If the synthesis is typological, the interests being synthesized and representing the material basis of the rule can never be perfectly coincident with concrete interests. By contrast, when the material basis of the rule is concrete interests, we are faced with an effective collective construction of the legal rule. A collective construction, certainly, operated through the cooperative synthesis of socially diffuse and thus spontaneously aggregated individual interests (Ludwig 2020).

5. The individual will as a driver of progressive institutional change

From what has just emerged, the individual will, assuming its own (intrinsic) normative force as a consequence of the centrality of individual freedom, becomes a relevant element within the general framework of the sources of law.

After all – it bears repeating –, the connection between an individual will (*voluntas*) becoming a legal rule and the judiciary is by no means accidental; rather, quite the opposite is true. To wit: precisely because individual human action becomes social action, becomes social context, it is clear that judiciary very strongly and very clearly assumes the role of social mediator (beyond the role of parliament), precisely because the process (in the historical time of creative judiciary and political jurisdiction – a creativity and politicalness that even in the past, certainly, were connotative elements of judiciary, though in the past the criticism directed at these elements was sharper than it is today) becomes the main institutional *locus* of selection of legally relevant interests, and thus the main *locus* of attribution of legal relevance.

Contemporary *juridicity*, in fact, is characterized by a prominent transformative force of the judiciary, which is perfectly parallel to the social force of individual will. In other words, we can speak of a progressive process of 'juridicization' (*i.e.*, the expansion of law's reach) that takes on significance in holistic terms and has an individual origin. Both the individual will and the process, in which, through the activity of judgment, the rule of the case is identified, express an individual dimension of reality, which can then become a social dimension. [4]

In this sense, between the individual moment and the social moment, there is no opposition at all, but rather relation and, indeed, cooperation.

[4] See Chizzini, in this volume.

Here, then, the individual will that becomes the norm, expresses, in the perspective of the relationship between individual will and progressive institutional transformation, the driving force of the legal order, capable of such a role precisely because, in the first place, it moves within the perimeter of individual action (and thus of individual interest).

The individual moment, in this sense, captures a need that can then become socially relevant (when that need does not turn out to be solely the projection of a need, more than strictly individual, that is not in line with the general social sensibility – that sensibility, for example, that today takes for granted that a contemporary legal system recognizes marriage not already within the male/female duality, as was the case until the recent past). Thus, it is the individual/social cooperative relationship (a biunivocal cooperation) that allows, on the one hand, the individual will to affect the social dimension, and that allows, on the other hand, the social dimension to operate as a *tertium comparationis* (*i.e.*, a comparative standard) with respect to everything that, at the moment, is only an individual dimension.

It may be added that such a two-way relationship of a cooperative nature between the individual and the social is what legitimizes (in political and therefore legal terms) an ordinal transformation from below. From this point of view, a transformation seems to be fixed within the flexibility typical of spontaneous orders as complex orders (Mulligan 2025).

We could also speak of an ordering transformation, that is, an order that is always present and at the same time a context-dependent variable.

Everything is then strongly intertwined with the temporal factor, that is, with the time of legal change.

6. The speed of legal change

This is, arguably, the most delicate aspect, both in theoretical and practical terms.

While there can be no doubt about the transformative juridical force of the individual will, which in this sense becomes a juridical will, and thus becomes a norm, the temporal aspect is undoubtedly problematic. That is: when does the exact time come for introducing a particular legal change? In other words, when can the appropriate time be said to have arrived for the individual will (*voluntas*) to actually become the norm, and thus acquire a direct prescriptive value, such, precisely, as to transform the legal system?

The merely quantitative answer certainly cannot suffice (although there is no doubt that the quantitative element carries weight: *i.e.*, an isolated will

is going to be a will, for these institutional purposes, irrelevant); a necessarily qualitative element is needed, pertaining the content of a will that has already taken on a socially relevant significance (Varga 2025).

As also specified above, such social relevance often passes, today, through the judiciary: many claims marked by a similar content are a signal, both quantitative and qualitative, of a specific social need, which has not remained expressed in the abstract, as a mere 'will to power', but which, on the contrary, has found a procedural concretization. From this point of view, it may be further observed that the non-acceptance of such claims is not, in itself, a signal of legal irrelevance; rather, it is a signal that assumes relevance with reference to the temporal aspect.

This, in fact, in my view, is the way forward in assigning legitimate transformative force to the individual will. With the clarification that, here, legitimate means precisely democratic: that is, consistent with a constitutional order that places individual freedom at its core, and thus the idea of a progressive and constant strengthening of that freedom – a strengthening that, of course, also means adjustment to the surrounding social context (Tepedino et al. 2024).

All this brings us back to the assertion that there is not and cannot be, a static concept of freedom.

On the contrary, what can exist is a dynamic concept of individual freedom, which, as such, is capable of gradually adjusting to the general, that is, social, idea of freedom.

The social idea of freedom (Thalos 2016), as itself a product of individual freedom, requires further clarification. We are clearly faced with the idea of communitarian freedom, and thus, at the same time, we are faced with communitarian liberalism, as already mentioned above.

A freedom that is socially affirmed, and which, therefore, socializes; and, in becoming socialized, it diffuses and thus generalizes, and thereby becomes – precisely, in democratic terms – a criterion of reference and judgment for selecting, even in chronological terms, what we might call the 'democratic timeliness of individual freedom'.

From this point of view, freedom becomes the norm because and in light of the judgment – that is, thanks to the procedure – which, in this perspective, evolves into a measure for determining the time of freedom and the selector of the contents of freedom, because of the historical time in which these contents are enforced.

This, after all, is a mechanism of competition and social selection perfectly suited to the progressive development of freedom that characterizes a contemporary open society. In this sense, the question of the will (*voluntas*) becoming norm, and thus the question of the relationship between will,

order, and justice, is also a communicative question (Stone, Tarello 1960), and in particular a question of relationships between values, needs, expectations, and the social expressions of these relationships (on the assumption that every relationship is a measure of value, a sign of value).

The legal, and particularly normative, solution is thus a social product; it is, in other words, the measure, content, and time of social relations.

In this sense, every legal problem (and thus also the problem of the individual will/*voluntas* becoming a norm) is a problem of social relations, and hence a problem of understanding the social relevance of those relations.

7. The legal force of the individual will from the perspective of the contemporary open society

The conclusion of this brief overview, which has mainly aimed at highlighting some problems (to some extent still open, and which in any case are in search of a satisfactory general-theoretical framework) related to the legal force of individual freedom, is that there is no legal morphology that is not also a social morphology.

Coherently with this assumption, this piece attempts to indicate some viable paths for the theoretical consolidation of the transformative force of freedom. To this extent, it can be emphasized the following aspect, which crosses the political and the legal fields: the systematic dimension of law – and therefore the institutional dimension of the law – is a relational dimension, based on relationships between interests, in a perspective of constant movement (political-social, and therefore cultural), on which the legal morphology of a society depends.

If this is the premise of the discourse, the conclusion can only be the following: the contemporary open society is a complex social system and, as such, requires a parallel complex conception of freedom – after all, every cultural system is a complex system (Camps et al. 2025).

Hence, the constant dialectic arises (a communicative relationship between different interests and claims) between what is individual and what is social (Choi 2025). A dialectic that, thanks to the persuasive force of argumentation (and here the communicative aspect returns, impacting the axiology of the legal system and thus its prescriptive content) expresses, simultaneously, both that axiological balance and that chronological balance necessary for the legal system to perform, always and to the full, its role as a social stabilizer, without being overwhelmed either by an excess (quantitative and temporal) of individual claims, or by a pernicious social immobilism with

respect to the developments potentially inherent within an individual will that can become the norm.

The path to individual freedom, therefore, is always open before us, but it is a path that is always illuminated by the social context: by that collective dimension of individual freedom that is in constant dialectical relation with its individual dimension.

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